



CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

## New Jersey Office of the Attorney General

Division of Consumer Affairs  
State Board of Professional Engineers and Land Surveyors  
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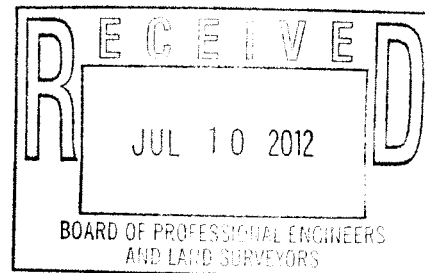
June 22, 2012

### Certified and Regular Mail

FAX

John Palus, P.E.  
56 Inlet Terrace  
Belmar, NJ 07719

RE: I/M/O John Palus, P.E.  
Case No. 10-39



**Mailing Address:**  
P.O. Box 45015  
Newark, NJ 07101  
(973) 504-6460  
(973) 273-8020

### Offer of Settlement In Lieu of Filing a Formal Disciplinary Complaint

Dear Mr. Palus:

This letter is to advise you that the New Jersey State Board of Professional Engineers and Land Surveyors (hereinafter the "Board") has had an opportunity to review evidence and testimony concerning your professional conduct in connection with a "Riparian Buffer Exhibit" ("Exhibit") which you prepared dated April 1, 2010. By way of background, the Board initially received an e-mail from Samuel J. Chung, P.E. of your firm, Dynamic Engineering Consultants, dated December 6, 2010 seeking a determination as to whether it was ethical for your firm to utilize a scan of an Existing Conditions Map obtained through an OPRA request to show the exact location of physical features such as a waterway, if that plan was referenced in the Exhibit which had been provided to NJDEP. Accordingly, upon review of the information in that e-mail, the Board commenced an investigation into the matter.

More specifically, evidence and testimony reveals that the Exhibit was signed and sealed by you and submitted to the New Jersey Department of Environmental Protection ("NJDEP") for the purpose of obtaining an NJDEP determination letter in support of an objection made by your client, Village Super Market, Inc., to the Bernardsville Planning Board against an applicant's site plan application. You testified that your client's property is situated across the road from the property of the applicant, who is a competing business.

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In preparation of your Exhibit, you utilized a sheet entitled "Existing Conditions Plan" which was part of a "Preliminary Site Plan and Lot Merger" prepared by Thomas Quinn, P.E. of EKA Associates dated December 21, 2009, revised February 9, 2010. You testified that you obtained a copy of the Existing Conditions Plan via an Open Public Records Act request, which copy did not include a raised seal and to your knowledge was not originally signed and sealed by a New Jersey licensed professional land surveyor.

In furtherance of your application to the NJDEP, you testified that you utilized the Existing Conditions Plan as a base by removing the title block of EKA Associates and added an overlay depicting the 300 foot buffer, which you then entitled "Riparian Buffer Exhibit." Thus, you relied upon the information on the Existing Conditions Plan to accurately depict the existing conditions of the applicant's property. Further, there was no engineering design involved on your Exhibit, only the depiction of existing conditions.

Thereafter, although you are not a New Jersey licensed professional land surveyor, you signed and sealed the Exhibit and submitted it to NJDEP, who then relied upon it and issued a determination letter. Thereafter, you provided that determination letter to the Bernardsville Planning Board in support of your client's objection to the applicant's pending site plan application.

Testimony and evidence reveals that you did not verify the accuracy of the information on the Existing Conditions Plan, or obtain a properly signed and sealed current Existing Conditions Plan from a New Jersey licensed professional land surveyor, and in fact you added an overlay depicting existing conditions, i.e. 300 foot buffer, to create your Exhibit for NJDEP. You also did not obtain approval from EKA Associates to utilize the Existing Conditions Plan. As a result, the existing conditions shown on your Exhibit were not transferred from a properly signed and sealed current Existing Conditions Plan prepared by a New Jersey licensed professional land surveyor in accordance with N.J.A.C. 13:40-5.1. Finally, although you testified that you also reviewed and relied upon an "Existing Conditions Plan" prepared by Schoor DePalma dated December 22, 2006 and referenced on the Existing Conditions Plan of EKA Associates, again, it was a copy without a raised sealed and to your knowledge was not originally signed and sealed by a New Jersey licensed professional land surveyor, and, further, you utilized it without approval or verification of the accuracy of the information on that Plan.

You argue that the term "existing conditions" is not specifically defined in the Board's statutes and regulations, except to the extent that it can be found in Subchapter 7. The Board finds, however, that the term "existing conditions" has a plain meaning, namely, the current condition of the property, which results from engaging in the practice of professional land surveying as defined in N.J.S.A. 45:8-28(e) and, further, said practice is prohibited by unlicensed persons pursuant to N.J.S.A. 45:8-27. Therefore, the Board finds that defining "existing conditions" provides no further guidance and is unnecessary.

You further argue that the exception language found in the definition of the "practice of land surveying" applies in that the measuring of the riparian buffer was part of an engineering design project and, further, those measurements resulting in locating the riparian buffer did not relate to property lines, lot lines, etc. The Board finds, however, that the threshold question for determining the applicability of the exception language has not been met, namely, in the present case there was no engineering design performed in the preparation of, or shown in, the Exhibit. Finally, the Board finds that a "riparian buffer" is an existing condition and that the measuring and locating of the riparian buffer in this case constitutes the unlicensed practice of professional land surveying. Finally, for purposes of resolving this matter, you acknowledge the Board's findings and agree to be bound by the settlement terms; however, you neither admit nor deny the findings made by the Board in this matter.

Upon review of all available information, the Board finds that you are in violation of:

1. N.J.S.A. 45:8-27 and N.J.S.A. 45:8-28 in that you signed and sealed an "Exhibit" which contained only existing conditions and, further, you depicted an additional existing condition, i.e. 300 foot buffer, via an overlay on your Exhibit, all of which constitutes the unlicensed practice of professional land surveying;
2. N.J.S.A. 45:1-21(e) in that you committed professional misconduct in connection with the submission of your Exhibit to the NJDEP by failing to obtain a properly signed and sealed current Existing Conditions Plan from a New Jersey licensed professional land surveyor; and in connection with your reliance upon and utilization of Existing Conditions Plans without a raised seal, and to your knowledge not originally signed and sealed by a New Jersey licensed professional land surveyor, and further without authorization and verification from the licensed professionals who prepared them.

As a result of the foregoing, the Board has determined that the above violations are sufficient to warrant the initiation of formal proceedings against you. Notwithstanding that decision, the Board has determined that it will first offer you an opportunity to settle this matter in an attempt to avoid the initiation of more formal proceedings if you consent to the following terms:

1. Agree to a formal reprimand upon your signing of the acknowledgment at the bottom of this letter in connection with the above violations;
2. Agree to immediately cease and desist from the unlicensed practice of professional land surveying upon your signing of the acknowledgment at the bottom of this letter;
3. Payment of a civil penalty totaling **\$5,000.00** (\$2,500.00 per violation) to be paid **immediately** upon your signing of the acknowledgment at the bottom of this letter in connection with the above violations;
4. Payment of investigative costs in the amount of **\$392.25** to be paid **immediately** upon your signing of the acknowledgment at the bottom of this letter;
5. Provide proof of successful completion, to the Board's satisfaction, of a minimum of eight (8) hours of continuing education in the area of ethics, which shall be pre-approved by the Board, within ninety (90) days of your signing of the acknowledgment at the bottom of this letter. Said continuing education shall not count towards any biennial renewal period; and
6. Provide proof, to the Board's satisfaction, that you have withdrawn in writing your submission, including Exhibit, to the NJDEP, and advised NJDEP that the submission should be disregarded, within sixty (60) days upon your signing of the acknowledgment at the bottom of this letter.

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In making a determination, you should know that pursuant to N.J.S.A. 45:1-25 any person who engages in conduct which is in violation of any provision of the statutes and regulations administered by the Board shall, in addition to any other sanctions provided by statute, be liable for a civil penalty of not more than \$10,000.00 for the first violation and not more than \$20,000.00 for the second and each subsequent violation. However, in an effort to resolve this matter amicably, the Board offers to settle on the terms stated above. If you are willing to resolve this matter on the offered settlement terms, you may do so by signing the acknowledgment at the bottom of this letter and returning it to the Board office within 15 days. In such event, this letter shall be a matter of public record.

In the event you are unwilling to settle this matter on the offered terms, it will be referred to the Attorney General's office for the initiation of formal proceedings. In such event, you will be afforded an opportunity to defend against the alleged violations. You are advised, however, that in the event formal charges are filed, you may be assessed civil penalties in an amount greater than that herein offered in settlement should any charges against you be sustained. Additionally, the Board may, if the facts herein or any additional facts are found to so warrant, enter an order requiring you to reimburse certain monies and/or requiring you to pay costs incurred by the Board. Should you have any questions concerning this letter or the settlement offer herein, I suggest that you contact Deputy Attorney General Michelle Albertson, who may be reached at (973) 648-7297.

If you elect to settle this matter, you should sign the acknowledgment at the bottom of this letter and return it to the Board within fifteen (15) days following your receipt of this letter. In the event that the Board receives no response from you within fifteen (15) days, the Board's settlement offer shall be considered withdrawn and the matter will be referred to the Attorney General's Office for the initiation of formal proceedings.

NEW JERSEY STATE BOARD OF PROFESSIONAL  
~~ENGINEERS AND LAND SURVEYORS~~

By: 

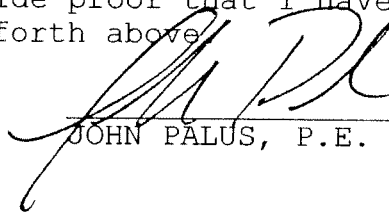
PAUL RAY

Acting Executive Director

cc: B. Michelle Albertson,  
Deputy Attorney General  
cc: Michael Gross, Esquire

John Palus, PE

ACKNOWLEDGMENT: I, John Palus, P.E., hereby acknowledge that I have read and reviewed the settlement proposal set forth in the above letter. I acknowledge the findings of the Board as set forth above. I am aware that, by signing this acknowledgment, I am waiving any rights I may have to defend myself against any charges of wrongdoing at an administrative hearing. I am also aware that the action taken against me by the Board herein is a matter of public record and that this letter is a public document. I hereby agree to a formal reprimand for the violations outlined herein above and to immediately cease and desist from the unlicensed practice of professional land surveying. I agree to the immediate payment of a civil penalty of \$5,000.00 and investigative costs of \$392.25, and to complete the continuing education as set forth above. I further agree to provide proof that I have withdrawn my submission to the NJDEP as set forth above.

  
JOHN PALUS, P.E.

Dated:

7/5/12